

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

GAIL HARNESS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:18-cv-00100, 3:19-cv-00340
)	Jury Demanded
)	
ANDERSON COUNTY, TENNESSEE,)	
)	
Defendant.)	

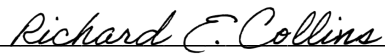
**PLAINTIFF’S MOTION IN LIMINE TO PROHIBIT DEFENDANT FROM
ARGUING IMPROPER COMPARATIVE FAULT ALLEGATIONS**

This is a civil rights case brought under the Equal Protection Clause and the Tennessee Human Rights Act. Defendant has stipulated, as it must, that Anderson County is subject to the Equal Protection Clause as a governmental entity and under the THRA as an “employer.” There is no comparative fault for the jury to consider under either provision. Indeed, under the THRA, only the county can be sued, as the employer, and under the § 1983, comparative negligence does not apply to damages for federal constitutional rights violations. *See Blair v. Harris*, 993 F. Supp. 2d 721, 727 (E.D. Mich. 2014).

Still, Plaintiff is concerned that Defendant will attempt to argue that Jones is the “real defendant” or otherwise present an “empty chair” defense. While Jones is certainly blameworthy for his pattern of egregious and unwelcomed sexual advances, this case is against Defendant for allowing that hostile work environment to take root and for failing to protect employees like Plaintiff. Although brought under the Equal Protection Clause, Plaintiff’s federal claim is akin to claims under Title VII, which also imposes liability on the employer only and allows for no comparative fault. Thus, it would be improper for Defendant to suggest to the jury that Jones is the one they should

be holding liable (i.e., an “empty chair defense”) because again Defendant is itself liable under the constitution and THRA, and there is no apportionment of fault. Accordingly, this Court should prohibit Defendant from presenting any evidence or argument concerning comparative fault, including any argument that Jones—and not the County—should be liable.

Respectfully submitted,


Richard E. Collins (TN Bar No. 024368)
STANLEY, KURTZ & COLLINS, PLLC
422 S. Gay Street, Suite 301
Knoxville, TN 37902
(865) 522-9942
(865) 522-9945 fax
richard@knoxvilleattorney.com

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of June, 2021, filed a true and correct copy of the foregoing electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.


Richard Everett Collins